

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MARK R. GUZY and SHANNON GUZY,  
  
Plaintiffs,  
  
v.  
  
TIMOTHY W. NELSON, TIMOTHY W.  
NELSON, CPA and EVANS NELSON &  
COMPANY, CPAS, et al.,  
  
Defendants.

Case No. 3:21-cv-00258-HDM-WGC

ORDER

Before the court is the plaintiffs' motion to remand (ECF No. 6). The defendants have opposed (ECF No. 9), and plaintiffs have replied (ECF No. 13).

The plaintiffs, citizens of Texas, filed their complaint in this action in state court on September 10, 2020. On June 7, 2021, the defendants, citizens of Nevada, removed this action to federal court on the basis of diversity jurisdiction. 28 U.S.C. § 1332. Although this action had been pending in state court for nearly nine months, the defendants asserted that they only recently received notice that the amount in controversy requirement is met. The plaintiffs move to remand, arguing that the defendants' removal of this action violated the forum defendant rule, 28 U.S.C. § 1441(b)(2), and was untimely.

1       Section 1441(b)(2) provides that "an action otherwise  
2 removable solely on the basis of the jurisdiction under section  
3 1332(a) of this title may not be removed if any of the parties in  
4 interest properly joined and served as defendants is a citizen of  
5 the State in which such action is brought." This rule, known as  
6 the forum defendant rule, is procedural, and thus waivable, if the  
7 plaintiff fails to timely move to remand on that basis. *See Lively*  
8 *v. Wild Oats Markets, Inc.*, 456 F.3d 933, 940 (9th Cir. 2006);  
9 *Raizada v. Blum*, 2019 WL 2099916, at \*2 (C.D. Cal. May 14, 2019)  
10 (unpublished disposition); *SWC Inc. v. Elite Promo Inc.*, 234 F.  
11 Supp. 3d 1018, 1022-23 (N.D. Cal. 2017). Because the plaintiffs  
12 have timely moved to remand in this case, the rule has not been  
13 waived.<sup>1</sup>

14       To the extent the defendants suggest that the court has  
15 discretion to not enforce the rule, that argument is without merit.  
16 The caselaw is clear that in this context, the plaintiff controls  
17 the choice of whether to remain in federal court or to have the  
18 action remanded to state court. *See Lively*, 456 F.3d at 940 ("[T]he  
19 forum defendant rule allows the plaintiff to regain some control  
20 over forum selection by requesting that the case be remanded to  
21 state court."); *see also Tradewind Consulting, LLC v. Morrison*,  
22 2011 WL 13220933, at \*2 (C.D. Cal. Aug. 29, 2011) (unpublished  
23 disposition) ("It is not the Court that waives the forum defendant  
24 rule, but the opposing party.").

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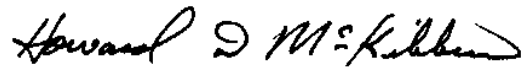
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26 <sup>1</sup> Several district courts have also held the rule may be waived if  
27 the plaintiff engages in affirmative conduct suggesting a waiver  
28 of the right to remand, *see, e.g., Raizada*, 2019 WL 2099916, at  
\*2; *SWC Inc.*, 234 F. Supp. 3d at 1022-23, but the defendants make  
no argument that the plaintiffs have done so here.

1 Because the removal violates the forum defendant rule and the  
2 matter shall be remanded on that basis, the court declines to  
3 address the parties' remaining arguments.

4 In accordance with the foregoing, IT IS THEREFORE ORDERED  
5 that the plaintiffs' motion to remand (ECF No. 6) is GRANTED. This  
6 action is therefore REMANDED to the Second Judicial District Court  
7 of the State of Nevada in and for the County of Washoe.

8 IT IS SO ORDERED.

9 DATED: This 29th day of July, 2021.

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12 UNITED STATES DISTRICT JUDGE  
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